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LIEW YOK YIN

v.

AGS HARTA SDN BHD

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HIGH COURT MALAYA, JOHOR BAHRU
SYED AHMAD HELMY J
[CIVIL SUIT NO: [MT-1] 22-436-2002]
22 MARCH 2006

C ***LAND LAW:*** *Indefeasibility of title and interests - Forged transfer - Whether plaintiff had an indefeasible title - Whether defendant bona fide purchaser for value - National Land Code 1965, s. 340(2)(b), (3)*

D The defendant company executed a sale and purchase agreement with one Liew Yok Yin for the purchase of agricultural land ('said land') at the purchase price of RM500,000. The sale documentation comprising the sale and purchase agreement, the transfer forms and the valuation forms were duly executed. The purchase price was also paid and the said land was registered E under the defendant's name. The plaintiff brought this action against the defendant on the grounds that she was the actual owner of the said land and that she did not at any time part with the possession of the title deed nor execute any transfer of the said land with any person. It was not disputed that the plaintiff F bore the same name as the person who purportedly sold the said land but had a different identity card number and address. The issues were whether the plaintiff had an indefeasible title to the said land by virtue of s. 340(2)(b) of the National Land Code ('NLC') and whether the defendant was a *bona fide* purchaser for value under the proviso to s. 340(3) NLC.

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Held (allowing the plaintiff's claim):

(1) The defendant agreed that the sale and transfer documents executed were with the vendor who bore the same name with H the plaintiff but had a different identity card, number and address. Particularly, Mr Loh (the solicitor who acted for the vendor) testified that the person by the name of Liew Yok Yin for whom he prepared the sale documentation and who executed the same was not the plaintiff. As the sale I documentation did not bear the signature of the plaintiff, it

could not be a sufficient instrument to convey title to the defendant. Hence, the sale documentation was a forgery and s. 340(2)(b) NLC was applicable. (paras 13, 14, 15, 16 & 17)

(2) The evidence adduced showed that the sale was concluded without any proper investigation into the title or the person claiming to be owners of the property. Further, the sale was completed five months after the given completion date in contravention of the express term that time was of the essence. There did not appear to be any valuation done either. Further, the evidence of Mr Loh, too, was not supportive of the defendant. He was a seasoned lawyer of 20 years' practice but the manner in which he conducted himself in the sale transaction left much to be desired. It followed that the defendant was not a *bona fide* purchase even though valuable consideration was given. Hence, the proviso to s. 340(3) NLC was inapplicable. (paras 19, 20, 21, 22, 23, 24, 25 & 26)

Case(s) referred to:

Adorna Properties Sdn Bhd v. Boonsom Boonyanit [2001] 2 CLJ 133 FC ***(refd)***

State Tailor Sdn Bhd v. Nallapan [2005] 2 CLJ 167 CA ***(refd)***

Legislation referred to:

National Land Code, s. 340(2)(b), (3)

For the plaintiff - Loh Wann Yuan (Bernard George with him); M/s Loh & Ranjit
Tan Hee Soon; M/s Tan He Soon & Co

For the defendant - Faizah Khalid (Abdul Aziz Hamzah with him); M/s Zamani Ibrahim Tarmizan & Co

Reported by Usha Thiagarajah

JUDGMENT

Syed Ahmad Helmy J:

[1] The plaintiff's claim as appears in the statement of claim is for the following declaratory reliefs and damages:

A 1. A declaration that the plaintiff is the owner of the said land known as GM 210, Lot 1183, Mukim Senai-Kulai, Daerah Kulai, Negeri Johor.

2. A declaration that the defendant's registration as the owner of
B the said land is void.

3. An order that the Registrar of Titles, Johor Bahru, expunge the name of the defendant as the owner of the said land from the registered document of title.

C 4. An order that the Registrar of Titles, Johor Bahru, restores the plaintiff as the owner of the said land by making the appropriate endorsement on the registered document of title and all other relevant documents.

D 5. An order that the issued document of title or any copy of title in respect of said land and in the possession of the defendant its servants or agents be surrendered by the defendant to the Registrar of Titles for cancellation.

E 6. An injunction to restrain the defendant from dealing or entering into any dealings relating to the said land.

7. An injunction to restrain the defendant its servants or agents from entering the said land.

F 8. General and special damages.

9. Interest on the said damages for the appropriate rate and period.

10. Costs.

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11. Such further or other relief as this court deems just.

[2] The basis of the plaintiff's claim for declaratory reliefs is that the registration of the title into the defendant's name was obtained
H by forgery and/or means of an insufficient and/or void instrument as the plaintiff never at any time executed any instrument of transfer in the defendant's favour and that the original issue document of title has all along been in her possession and she never parted with it.

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[3] The defendant in their amended defence denied the existence of forgery on the instrument of transfer and pleads that even if forgery exists they are *bona fide* purchaser for value having paid the full purchase price of RM500,000 and the relevant stamp duties and registration fees and by reason thereof have acquired an indefeasible title under s. 340 of the National Land Code.

[4] The agreed facts as per the statement of agreed facts in encl. 39 are as follows:

1. On 26 January 1999 the defendant executed the sale and purchase agreement with a lady named Liew Yok Yin bearer of I.C. No. 500213-01-5631 of No. 128 Jalan Padi Mahsuri, Taman Senai Baru, 81400 Senai (hereinafter called "the vendor") for the purchase of the agricultural land measuring 7A3R27P held under GM 210 Lot 1184 Mukim Senai-Kulai, Daerah Johor Bahru (hereinafter called the "said land") at the purchase price of RM500,000.

2. Form 14A dated 2 November 1999 was used to effect the transfer of the said land.

3. The said land was registered in the defendant's name by the Pentadbir Tanah Johor Bahru on 25 January 2000.

4. The plaintiff is also known as Liew Yok Yin but her identity card number and address differs from that as stated in the sale and purchase agreement and Form 14A.

5. The vendor appointed Messrs. Loh & Renga Johor Bahru to represent her in the sale of the said land.

6. On 3 August 2001 plaintiff was informed by her son Chia Chee Chiong of clearance works on the said land and plaintiff made a police report upon being shown by the defendant a copy of the title duly registering the said land in the defendant's name.

[5] The plaintiff in support of her claim called two witnesses – herself and her son.

[6] The plaintiff's evidence as borne out by her witness statement marked PWS1 was to the effect that she was the registered owner of the said land ever since 29 July 1976 and the original issue document of title was kept by her in her cabinet and she did not at any time part with the possession of the title deeds

nor executed any transfer of the said land with any person. She has been paying the quit rent and upon being informed by her son of the transfer into the defendant's name she lodged a police report. On being shown the Form 14A she denied that the signature appearing therein was hers and that she did not know the lawyer by the name of Loh Song Chuan and had never had any dealings with the law firm of Loh & Renga.

[7] The plaintiff's son testimony centered about how he came to know of the clearing of the land by the defendant and assisting the mother in the lodgment of the report and lodgment of caveat.

[8] The defendant in their defence proferred the testimony of 2 witnesses – their Managing Director En. Shahar bin Abd. Karim and Mr. Loh Song Chuan the solicitor who acted for the vendor.

[9] The evidence of En. Shahar as borne out by his witness statement DWS1 was to the effect that he came to know of the said land through a clerk of the law firm of Abdul Haris Norhayati & Co. by the name of Yusof sometime in 1998.

[10] He did not at any time meet the vendor of the said land and the agreement for sale & purchase and the transfer forms were prepared by the vendor's solicitors Messrs. Loh Song Chuan and was forwarded through his solicitors Messrs. Abdul Haris for his execution and he has paid the full purchase price, legal fees, stamp fees and registration fees and the said land was duly registered in the defendant's name.

[11] The second witness for the defendant was Mr. Loh Song Chuan, the solicitor who acted for the vendor Liew Yok Yin the bearer of identity card No. 500213-01-5631 and his evidence was to the effect that he acted for the vendor and was the solicitor who prepared the Sale & Purchase Agreement and the Transfer Forms & Valuation Form. He testified that he witnessed the execution by the vendor of the documents prepared by him. He confirmed that the vendor was a young Chinese lady in her thirties and though the last 4 digit of her identity card bore odd numbers namely 5631 it was not within his knowledge that the odd number reflects the identity card number of a male and not a female. He did not prepare nor file the CKHT forms nor retained any monies for real property gains tax and though he was aware of the statutory requirement to file CKHT forms he could not offer any reason why he failed to do so.

[12] The defendant's counsel after the testimony of the second witness requested for an adjournment as his third witness En. Abdul Haris the solicitor who acted for the defendant was according to him away in Australia. I refused the defendant's counsel request and directed him to close his case if he had no further witnesses. My direction was predicated by the fact that defence counsel since informing the witness on 13 May 2005 of the date of hearing did not follow up by sending reminders of the date of hearing. Furthermore no documentary evidence was produced in court in support of the statement that the witness was in Australia.

[13] I have duly considered the evidence as adduced by the respective witnesses of the plaintiffs and defendant and the following are my findings:

1. The plaintiff herein never executed the Sale and Purchase Agreement, the Transfer Forms and the Valuation Forms. This aspect of my finding is not only based on the evidence of the plaintiff herself in that she never at any time executed any Sale and Purchase Agreement, the Transfer Forms and The Valuation Forms for the disposal of the said land to the defendant or for that matter to anybody as the original title deeds was in her possession all along but the defendant in the statement of agreed facts expressly agreed that the sale and transfer documents executed by them was with the vendor who bore the same name with the plaintiff but with a different identity card number and address. Of particular significance is the evidence of SD2 Mr. Loh Song Chuan in answer to the question posed by the court that the person by the name of Liew Yok Yin for whom he prepared the sale documentation and who executed same was not the plaintiff. The cumulative effect of the evidence aforesaid leads me to the inevitable conclusion that the sale documentation comprising of the sale and purchase agreement the transfer forms and the valuation forms did not bear the signature of the plaintiff and hence the signature appearing thereon not being the signature of the plaintiff cannot be a sufficient instrument to convey title to the defendant. On this score I find the plaintiff who is 90 years of age to be a witness of truth and hence it is obvious that since the sale documentation does not bear her signature it cannot bind her.

[14] In *State Tailor Sdn. Bhd. v. Nallapan* [2005] 2 CLJ 167 the Court of Appeal opined that an instrument of transfer which bears the forged signature of the transferor being an insufficient and void instrument is a distinct vitiating factor to the doctrine of indefeasibility and falls within s. 340(2)(b) of the National Land Code.

[15] In that case there was a finding of forgery that the signature appearing in the Borang 14A did not belong to the transferor. Hence the instrument of transfer was insufficient and void when it was presented for registration a distinct vitiating factor to the doctrine of indefeasibility of title as provided under s. 340(2)(b) of the National Land Code.

[16] The facts of this case falls squarely within the principle as established in *State Tailor Sdn. Bhd. (supra)*.

[17] That being the case the sale documentation was a forgery that does not bear the signature of the plaintiff and hence the defeasibility provision of s. 340(2)(b) of the National Land Code applies.

[18] To defeat the applicability of s. 340(2)(b) the defendant has to prove that they are *bona fide* purchasers for value under the proviso to s. 340(3) of the National Land Code – *Adorna Properties Sdn. Bhd. v. Boonsom Boonyanit* [2001] 2 CLJ 133 FC. To qualify for the category of *bona fide* purchasers of value, aside from valuable consideration there must be an absence of fraud, deceit or dishonesty and the knowledge or means of knowledge of such by the defendant at the time of entry into the transaction. The evidential burden is on the defendant that he is not only a purchaser for valuable consideration but also a purchaser in good faith.

[19] To my mind the defendant has on a balance of probabilities fail to discharge the burden that they are purchasers in good faith. I say so because the evidence adduced establishes that the circumstances in concluding the sale without any proper investigation into the title or the person claiming to be owners of the property and the unexplained completion effected five months after the completion date in contravention of the express terms of time being of the essence clearly negatives the *bona fides* of the defendant.

[20] The evidence of SD1 clearly establishes that he never met the vendor personally as all dealings were done through the clerk to Messrs. Abdul Haris and the solicitor therein who represented him. There is no supportive evidence adduced that there was investigation into the title to the said property and there does not appear to be any valuation done.

[21] In this connection it is also pertinent to allude to the evidence of SD2 Loh Song Chuan, the solicitors for the vendor. Upon scrutinizing his evidence, regretfully I have to say that it does not inspire confidence. In his own evidence he is a seasoned lawyer of 20 years practice but the manner in which he involved himself in the transaction leaves much to be desired – this is particularly telling in the manner in which he did not prepare the CKHT forms nor retained any gains tax amount when the agreement he prepared specifically provided for the provision of retaining property gains tax and more so when a scrutiny of the title presented by the vendor would reveal that she acquired the title in 1997 which is about two years back from the sale and hence would invariably attract real property gains.

[22] Again his attempt to adduce evidence that the defendant was not involved in fraud is questionable when he was never at any time representing the defendant.

[23] The conduct aforesaid leads me to conclude that the evidence of SD2 cannot be supportive of the *bona fide* of the defendant.

[24] Now aside from the evidence of SD1 that the defendant is a *bona fide* purchaser for value there is no other supporting evidence as regards his *bona fides*. There is no evidence from the defendant and/or the defendant's lawyer who represented the defendant that he ensured that an amount to cover the real property gains tax payable was retained by the vendor's solicitors bearing in mind that the vendor's solicitor was contractually obligated to retain such part of the balance of the purchase price for such purpose.

[25] In the absence of any supporting evidence I cannot conclude that the defendant is a *bona fide* purchaser even though valuable consideration had been given.

[26] That being the case I find that the defendant is not a *bona fide* purchaser so as to avail themselves of the proviso to s. 340(3) to defeat the vitiating factors as founded by me.

[27] In the premises I accordingly allowed the plaintiff's claim for declaratory reliefs as prayed in Items 1 to 7 of the relief prayer in the statement of claim and damages to be assessed before the deputy registrar. The plaintiff is also awarded costs to be taxed.